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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1529 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHCHANDRA N THAKER

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

1. Special Civil Application No. 1529 of 1997

MR DIPAK R DAVE for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1

MR PR NANAVATI for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/10/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner before this Court is a Councillor of the Viramgam Municipality, the respondent no.2 herein (hereinafter referred to as 'the Municipality'). It appears that in the year 1995 the petitioner was functioning as a Vice President of the Municipality. While acting as Vice President he made certain payments to one M/s.Ganesh Enterprises for executing certain work of civic amenities for the benefit of Food Corporation of India, which had godowns near the town but beyond the limits of the Municipality. The petitioner is alleged to have committed several irregularities in making the said payments. The State Government, therefore, in exercise of powers conferred by Section 37 of the Gujarat Municipalities Act, 1963, on 8th October, 1996 issued a notice calling upon the petitioner to show cause why he should not be removed from the office as a Councillor of the Municipality. After giving due opportunity to the petitioner, under order dated 11th February, 1997, the petitioner was ordered to be removed as a Councillor of the Municipality. Feeling aggrieved, the petitioner has preferred the present petition.

#. Mr.Dave has submitted that the petitioner is alleged to have committed misconducts in the capacity of Vice President of the Municipality. Even if, such misconducts were proved the petitioner could not have been removed as a Councillor. The State Government, at the most, could have removed the petitioner from the office of the Vice President. He has also submitted that the petitioner could not have been removed as a Councillor in his current term for the misconducts he is alleged to have committed as a Vice President in the previous term. In support of these contentions, Mr.Dave has relied upon the judgment of this Court in the matters of CHIMANBHAI R.PATEL v. ANAND MUNICIPALITY & ORS. [1983(1) GLR 67] and CHHANALAL A.PATEL v. THE STATE OF GUJARAT [1960(1) GLR 260].

#. Be it noted that the contention that the petitioner is alleged to have committed misconducts as a Vice President in the previous term is not supported by necessary averments. That is, there is nothing on record that the period of misconduct committed by the petitioner as a Vice President was during the previous term and not during the current term i.e. the term in which the show cause notice was issued. This Court, in the matter of CHIMANBHAI R. PATEL (Supra) has considered the scope and ambit of Section 37 of the Act and held that, "On a plain reading of this provision it is clear that the removal is from the office held by the concerned person at the relevant point of time. The act of misconduct or

disgraceful conduct or the incapacity must relate to the office of which he sought to be stripped under the aforesaid provision. In other words, if a person has abused his powers as the President, he can be removed from that office but not also from the office of a Municipal Councillor. .....Therefore, a person who misconducts himself or conducts himself in a disgraceful manner while performing his duties as a President or a Chairman of a Committee constituted by the Municipality under the Act, can be removed from the office of the President or Chairman, as the case may be, but it seems difficult to hold that he can also be removed from the office of Municipal Councillor even though the alleged misconduct or disgraceful conduct was not referable to anything done in the discharge of duties as a Municipal Councillor."

#. I am of the view that the above judgment shall apply to the facts of the present case with all force. In the present case also, the petitioner is alleged to have made certain payments and committed certain financial irregularities as Vice President of the Municipality. The petitioner as a Councillor could not have the power to make payments in question. Thus, the petitioner has committed irregularities which are referable to his office as Vice President alone and not as a Municipal Councillor. The petitioner, therefore, could not have been removed from the office as a Councillor.

#. In view of the above discussion, the petition is allowed. The impugned order dated 11th February, 1997 is quashed and set aside. Rule is made absolute. There shall be no order as to costs.

4th October, 2001. (Ms. R.M. Doshit, J.)

/sakkaf